

Notice: This agreement and all of its attachments shall become public upon the Effective Date. Any information that is private, confidential or proprietary must be clearly identified to the LAKESHORE RPC and agreed to in writing prior to signing this agreement.

The Lakeshore Redevelopment Planning Commission and the Consultant hereby mutually agree as follows:

GENERAL PROVISIONS

1. Identification and Definitions.

1.1 State Entity Name Lakeshore Redevelopment Planning Commission		1.2 State Entity Address c/o RFS Engineering, 71 Water St., Laconia, NH 03246	
1.3 Consultant Name		1.4 Consultant Address 109 Court Street, Laconia, NH 03246	
1.5 Consultant Phone Number	1.6 Account Number 01-14-14-141510-38920000-103-502507	1.7 Completion Date	1.8 Price Limitation
1.9 Contracting Officer for Christopher Shumway		1.10 State Entity Telephone Number 603.832.9013 (Chris Shumway)	
1.11 Consultant Signature		1.12 Name & Title of Consultant Signor	
1.13 Acknowledgment: State of _____, County of _____ On _____, before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace [Seal]			
1.13.2 Name & Title of Notary Public or Justice of the Peace			
1.14 State Entity Signature(s) _____ Date _____		1.15 Name/Title of State Entity Signor(s)	
1.16 Intentionally Left Blank			
1.17 Intentionally Left Blank			
1.18 Intentionally Left Blank			
2. EMPLOYMENT OF CONSULTANT SERVICES TO BE PERFORMED. The State of New Hampshire (the "State"), acting through the state entity identified in block 1.1 (the "LAKESHORE RPC"), engages consultant identified in block 1.3 (the "Consultant") to perform, and the Consultant shall perform, that work or professional services, or both, identified and more particularly described in the attached EXHIBIT A, which is incorporated herein by reference (the "Services").			
3. EFFECTIVE DATE AND TIME: COMPLETION OF SERVICES. 3.1. Notwithstanding any provision of this Agreement to the contrary, this Agreement, and all obligations of the parties hereunder, shall become effective on the date this Agreement is signed by the LAKESHORE RPC as shown in block 1.14 (the "Effective Date"). 3.2. If the Consultant commences the Services prior to the Effective Date, all Services performed by Consultant prior to the Effective Date shall be performed at the sole risk of the Consultant and in the event that this Agreement does not become effective, neither the State nor the LAKESHORE RPC shall have any liability to the Consultant, including without limitation, any obligation to pay the Consultant for any costs incurred or Services performed; however that if this Agreement becomes effective all actual and verifiable costs incurred prior to the Effective Date shall be paid under the terms of this Agreement. Consultant must complete all Services by the Completion Date specified in block 1.7. 3.3. The Consultant shall perform all Services in a continuous manner and as expeditiously as is consistent with good professional skill and care. The Consultant shall perform its Services in such manner and at such time as may be required by the LAKESHORE RPC. Time is of the essence of this Agreement.			
4. CONDITIONAL NATURE OF AGREEMENT. Notwithstanding anything in this Agreement to the contrary, all obligations of the LAKESHORE RPC or the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the LAKESHORE RPC or the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of those funds, the LAKESHORE RPC and the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Consultant notice of such termination. Neither the LAKESHORE RPC nor the State shall be required to transfer funds from any other account to the account identified in block 1.6 in the event funds in that account are reduced or unavailable.			

5. CONTRACT PRICE: LIMITATION ON PRICE: PAYMENT.

5.1. The contract price (the "Contract Price"), method of payment, and terms of payment are identified and more particularly described in Exhibit B, incorporated herein.

5.2. The payment by the LAKESHORE RPC of the Contract Price shall be the only, and the complete, reimbursement to the Consultant for all fees and expenses, of whatever nature, incurred by the Consultant in the performance hereof, and shall be the only and the complete compensation to the Consultant for the Services. Neither the LAKESHORE RPC nor the State shall have any liability to the Consultant other than the Contract Price.

5.3. Intentionally left blank.

5.4. Notwithstanding anything in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made, hereunder exceed the price limitation set forth in block 1.8 of these general provisions.

6. COMPLIANCE BY CONSULTANT WITH LAWS AND REGULATIONS: EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Consultant shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Consultant, including, but not limited to civil rights and equal opportunity laws.

6.2. During the term of this Agreement, the Consultant shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap or national origin and will take affirmative action to prevent such discrimination

6.3. If this Agreement is funded in any part by monies of the United States, the Consultant shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Consultant further agrees to permit the LAKESHORE RPC, the State or United States, access to any of the Consultant's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants and conditions of this Agreement.

7. PERSONNEL

7.1. The performance of the Services shall be carried out by employees of the Consultant and any subcontractor of the Consultant approved in advance by the LAKESHORE RPC. The Consultant shall at its own expense, provide all personnel necessary to perform the Services. The Consultant warrants that all personnel, including the personnel of any of Consultant's subcontractors, engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 The Consultant shall not hire, and shall permit no subcontractor, subconsultant or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services, to hire any person who is a State officer or employee, elected or appointed.

7.3. The Contracting Officer specified in block 1.9, or his or her successor, shall be the LAKESHORE RPC's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final.

8. EVENT OF DEFAULT, REMEDIES.

8.1. Any one or more of the following acts or omissions of the Consultant shall constitute an event of default hereunder ("Events of Default"):

- 8.1.1. failure to perform the Services satisfactorily or on schedule; or
- 8.1.2. failure to submit any report required hereunder or on schedule; or
- 8.1.3. failure to perform any other covenant or condition of this Agreement.

8.2. Upon the occurrence of any Event of Default, the LAKESHORE RPC may take any one, or more, or all, of the following actions:

8.2.1. give the Consultant a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Consultant notice of termination; and

8.2.2. give the Consultant a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the Contract Price which would otherwise accrue to the Consultant during the period from the date of such notice until such time as the LAKESHORE RPC determines that the Consultant has cured the Event of Default shall never be paid to the Consultant; and

8.2.3. set off against any other obligations the LAKESHORE RPC may owe to the Consultant any damages the LAKESHORE RPC or the State suffers by reason of any Event of Default; and

8.2.4. treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA: ACCESS; CONFIDENTIALITY; PRESERVATION.

9.1. As used in this Agreement, the word “data” shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2. On and after the Effective Date, all data, and any property which has been received from the LAKESHORE RPC or purchased with funds provided for that purpose under this Agreement, shall be the property of the LAKESHORE RPC, and shall be returned to the LAKESHORE RPC upon demand or upon termination of this Agreement for any reason.

9.3. Confidentiality of data shall be governed by RSA 91-A or other existing law. Disclosure pursuant to a right to know request shall require prior written approval of the LAKESHORE RPC.

10. **TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion to the Services, the Consultant shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report (“the Termination Report”) describing in detail all Services performed, and the Contract Price earned, to and including the date of termination. To the extent possible, the form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in EXHIBIT A. In addition to report specifications set forth in EXHIBIT A, the Consultant shall provide two (2) complete electronic copies of the Termination Report with each copy on a separate thumb/flash drive.

11. **CONSULTANT’S RELATION TO THE STATE.** In the performance of this agreement the Consultant is in all respects an independent contractor, and is neither an agent nor an employee of the LAKESHORE RPC or the State. Neither the Consultant nor any of its officers, employees, agents or members or subcontractors shall have authority to bind the LAKESHORE RPC or the State or receive any benefits, worker’s compensation or other emoluments provided by the LAKESHORE RPC or the State to their respective employees.

12. **ASSIGNMENT, DELEGATION AND SUBCONTRACTS.** The Consultant shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the LAKESHORE RPC. None of the Services shall be delegated or subcontracted by the Consultant without the prior written consent of the LAKESHORE RPC.

13. **INDEMNIFICATION.** The Consultant shall defend, indemnify and hold harmless the State, its officers and employees, and the LAKESHORE RPC and its commissioners and employees and any contractor or subcontractor of the LAKESHORE RPC not a party to this Agreement from and against any and all losses suffered by the State, its officers and employees, the LAKESHORE RPC and its commissioners and employees, or any contractor or subcontractor of the LAKESHORE RPC not a party to this Agreement and any and all claims, liabilities or penalties asserted against the State, its officers and employees, the LAKESHORE RPC and its commissioners and employees, or any contractor or subcontractor of the LAKESHORE RPC not a party to this Agreement by or on behalf of any

person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Consultant. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this Agreement.

14. INSURANCE AND BOND.

14.1. The Consultant shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor/subconsultant or assignee to obtain and maintain in force, both for the benefit of the State, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; and

14.1.2 special cause of loss coverage insurance covering all property subject to subparagraph 9.2 of these general provisions, in an amount not less than 80% of the whole replacement value of the property.

14.2. The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3. The Consultant shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Consultant shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

15. PROTECTCION OF PROPERTY. The Consultant shall take all reasonable and proper precautions to prevent damage to property, visible or concealed, and, where applicable, shall restore the property to substantially the same condition existing prior to the Consultant's entry.

16. WORKER'S COMPENSATION

16.1. By signing this Agreement, the Consultant agrees, certifies and warrants that the Consultant is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("Workers' Compensation").

16.2. To the extent the Consultant is subject to the requirements of N.H. RSA chapter 281-A, Consultant shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Consultant shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. Neither the LAKESHORE RPC nor the State shall be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Consultant, or any subcontractor or employee of Consultant, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

17. WAIVER OF BREACH. No failure by the LAKESHORE RPC or the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that event, or any subsequent Event. No express failure of any Event of Default shall be deemed a waiver of the right of the LAKESHORE RPC or the State to enforce each and all of the provisions hereof upon any further or other default on the part of the Consultant.

18. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

19. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto.

20. **CONSTRUCTION OF AGREEMENT AND TERMS.** This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

21. **THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

22. **HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

23. **SPECIAL PROVISIONS.** The additional provisions set forth in the attached EXHIBIT C hereto are incorporated herein by reference.

24. **SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

25. **ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior agreements and understandings relating hereto.

[Remainder of page intentionally left blank]

EXHIBIT A

SERVICES

A-1. The scope of the services (“Services”) to be provided by Consultant pursuant to this Agreement shall be ... *[insert description of scope of services]*.

A-2. Contract Price and payment terms are as specified in Exhibit B to this Agreement.

EXHIBIT B

CONTACT PRICE

The tasks to be performed under this Agreement are set forth in Exhibit A, Services. In payment for Services rendered, the Consultant shall bill LAKESHORE RPC *[insert negotiated payment terms]*.

The LAKESHORE RPC shall pay by check or bank wire each invoice submitted in accordance with this Agreement within 30 days of receipt, not to exceed the Contact Price inclusive of all expenses.

EXHIBIT C

ADDITIONAL PROVISIONS

C-1. This Agreement consists of the General Provisions, Exhibits A-C, and any other document(s) specifically incorporated herein by reference in Exhibits A-C. These Agreement documents are complementary, and what is required by one shall be binding as if required by all. Notwithstanding any provision of these Agreement documents to the contrary, the Agreement documents shall be interpreted on the basis of the following priorities for all purposes, including, without limitation, resolving disputes, discrepancies and/or conflicts among the Agreement documents or within any of the Agreement documents:

- A. Written amendments to the Agreement signed by both parties – those of a later date shall take precedence over those of an earlier date;
- B. The General Provisions;
- C. Exhibit C;
- D. Exhibit B;
- E. Exhibit A; and,
- F. Any document incorporated by reference in Exhibit A.